

DEPOSITION OF BARBARA GOODWIN

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,
Plaintiff,

vs.

PHENIX CITY, ALABAMA, et al.,
Defendants.

 **COPY**

CIVIL ACTION
FILE NO. 3:06-CV-00544-VPM

Oral Deposition of MS. BARBARA GOODWIN, Defendant,
called by the Plaintiff, before Courtney Tillman Peters,
Certified Court Reporter and Notary Public for the State
of Alabama, taken at the City of Phenix City Hall, 601
12th Street, Phenix City, Alabama 36867, on the 5th day of
April, 2007, commencing at 10:07 a.m. EST.

COURTNEY TILLMAN PETERS
Certified in Alabama & Georgia
CAUSEY & PETERSON CERTIFIED COURT REPORTERS
Post Office Box 81
Columbus, Georgia 31902
(706) 317-3111

APPEARANCES OF COUNSEL

For the Plaintiff:

MR. THOMAS A. WOODLEY
 Woodley & McGillivray
 1125 Fifteenth Street, NW
 Suite 400
 Washington, D. C. 20005

Also Present:

MR. DAVID DAVIS

For the Defendants:

MR. JAMES R. MCKOON, JR.
 McKoon, Thomas & McKoon
 925 Broad Street
 Phenix City, Alabama 36867

MR. JAMES P. GRAHAM, JR.
 Graham Law Offices
 712 13th Street
 Phenix City, Alabama 36867

Also Present:

ROY WATERS
 WALLACE HUNTER
 H. H. ROBERTS

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S T I P U L A T I O N S

IT IS STIPULATED AND AGREED by and between counsel appearing for the respective parties that:

1) The oral deposition of MS. BARBARA GOODWIN, Defendant, called by the Plaintiff, taken before Courtney Tillman Peters, Certified Court Reporter and Notary Public for the State of Alabama, at 601 12th Street, Phenix City, Alabama 36867, commencing at 10:07 a.m. EST, on the 5th of April, 2007;

2) ALL FORMALITIES with reference to notice of taking, notice of time and place of taking, qualifications of the Court Reporter, and all other matters precedent to the taking of depositions are WAIVED;

3) ALL OBJECTIONS, EXCEPT as to the form of the question and responsiveness of the answer, are RESERVED to the time of the hearing of the case;

4) ALL FORMALITIES with reference to the filing of depositions, including notice of filing, etc., are WAIVED;

5) With the consent of deponent, the reading and signing of the deposition by deponent is NOT WAIVED;

1 WHEREUPON, the deposition of Ms. Barbara Goodwin,
2 beginning at 10:07 a.m. EST, occurred as follows:

3 MS. BARBARA GOODWIN

4 Having been first duly sworn, testified upon examination,
5 as follows:

6 MR. WOODLEY: Ms. Goodwin, could you please state
7 your full name for the record.

8 THE WITNESS: Barbara Tillery Goodwin.

9 MR. WOODLEY: Ms. Goodwin, my name is Tom Woodley
10 and I'm one of the attorneys for the plaintiff, Mr.
11 David Davis in this lawsuit.

12 Have you, before now, had an opportunity to spend
13 some time with the City's attorneys concerning the
14 nature of this case and what the procedures are we'll
15 be following in your deposition this morning.

16 THE WITNESS: Yes.

17 MR. WOODLEY: So is it fair to say you have a
18 basic understanding what the issues are and the claims
19 are in this lawsuit.

20 THE WITNESS: Yes.

21 MR. WOODLEY: Have you ever had your deposition
22 taken before in another case?

23 THE WITNESS: Yes.

24 MR. WOODLEY: Would that be more than once?

25 THE WITNESS: No.

1 MR. WOODLEY: What kind of case was the previous
2 case?

3 THE WITNESS: To tell you the truth, I don't
4 remember. It was very -- testified for about 10
5 minutes and they decided that my testimony was not
6 needed.

7 MR. WOODLEY: Let me extend just to make sure
8 we're on the same page in your deposition, go through
9 a couple of the basic points and procedures. I will
10 be asking a number of questions, and we expect you to
11 give the answers. And everything that we say here in
12 your deposition will be taken down by this very able
13 court reporter, and she will put it in a transcript
14 form so that perhaps as early as next week, you will
15 have a chance to review and sign that transcript of
16 your deposition. Do you understand that.

17 THE WITNESS: Yes.

18 MR. WOODLEY: If at any time you don't hear or
19 understand one of my questions, stop me immediately
20 and I will be more than happy to repeat or rephrase
21 that question. Do you understand that.

22 THE WITNESS: Yes.

23 MR. WOODLEY: Are you under any medication or do
24 you have any medical condition that might impair your
25 ability to understand and respond to my questions.

1 THE WITNESS: No.

2 MR. WOODLEY: And most importantly, of course,
3 you have just been sworn under oath so you are
4 obligated under the potential penalty of perjury to
5 give truthful and honest answers. Do you understand
6 that.

7 THE WITNESS: Yes.

8 CROSS-EXAMINATION

9 BY MR. WOODLEY:

10 Q. What is your current occupation?

11 A. Work for the City of Phenix City as Personnel
12 Director.

13 Q. And how long have you held that position?

14 A. Approximately four and a half years.

15 Q. And what did you do before that?

16 A. I was the Office Manager for the Building
17 Department with the City of Phenix City.

18 Q. And how long approximately did you hold that
19 position?

20 A. I was employed in January of 1990.

21 Q. '90?

22 A. Yes.

23 Q. Is the position of Personnel Director also called
24 the Director of Human Resources?

25 A. Yes.

1 Q. That's one in the same?

2 A. Yes.

3 Q. Okay. And what are the basic responsibilities
4 that you have as the City's Personnel Director?

5 A. We take applications for employment. We handle
6 all the benefits for our city employees. We handle
7 workman's comp claims. We just basically do the -- all
8 the, as far as when an applicant is hired by the City, we
9 handle their personnel file. We administer the benefits,
10 handle the BlueCross BlueShield. In general, the clerical
11 work that is provided in the personnel file.

12 Q. In your position as Personnel Director for the
13 City of Phenix City, do you play a role concerning
14 possible discipline of city employees?

15 A. We document the discipline of each employee as it
16 comes from the various departments.

17 Q. Okay. Is that essentially an administrative task
18 that you perform?

19 A. Yes.

20 Q. Do you have any authority to approve or impose
21 any sort of discipline on city employees?

22 A. No.

23 Q. Let me invite your attention to a binder of
24 exhibits that we have in front of you, and the City
25 attorneys at the table also have a binder of exhibits for

1 their review. And I want you to open that blue binder.
2 If you would turn to Exhibit No. 5, please. And this
3 appears to be a job description for a Director of Human
4 Resources. Would that be the job description that you
5 have for your position as the Director of Personnel?

6 A. Yes.

7 Q. And it indicates here that you report to and are
8 accountable to the City Manager; is that accurate?

9 A. Yes.

10 Q. Have you seen this job description before today?

11 A. Yes.

12 Q. And in your view, is this essentially accurate
13 concerning the duties and responsibilities that you have
14 as a Personnel Director?

15 A. Yes.

16 Q. So just so I'm clear and the record's clear, you
17 do not have any authority to hire or fire city employees;
18 is that correct?

19 A. No, that's correct.

20 Q. Now, Ms. Goodwin, are you aware that the
21 plaintiff in this case, David Davis, who's seated at my
22 right, was employed by the City's fire department for
23 about eight years?

24 A. Yes.

25 Q. Okay. And are you aware that during his

1 employment with the city, he was promoted to the rank of
2 sergeant in the fire department?

3 A. Yes.

4 Q. Bear with me for just one second here. Okay.
5 Ms. Goodwin, let me invite your attention to Exhibit No.
6 18, also in the binder in front of you. This appears to
7 be a memorandum from Deputy Chief Roy Waters to Fire Chief
8 Wallace Hunter dated February 6, 2006. And the re: line
9 is Letter to Mr. H. H. Roberts. Have you seen this memo
10 before today?

11 And, by the way, I should say when I ask you to review
12 these documents, take as much time as you need to look
13 through those documents before you feel comfortable in
14 responding to my questions?

15 A. I believe this letter was submitted to my office
16 as a part of David's personnel file.

17 Q. Okay. So you have seen this before today?

18 A. Yes.

19 Q. You will note at the very bottom of this memo
20 from Deputy Chief Waters to Chief Hunter, it says as
21 follows, "As I have communicated to you on several
22 occasions, David Davis is doing an outstanding job for me
23 and has a very positive and professional attitude." You
24 see where it says that?

25 A. Yes.

1 Q. Based upon the information that you have, would
2 you agree or disagree with that assessment of Mr. Davis'
3 performance as a firefighter on the job?

4 A. I do not have direct communication with the
5 firefighter on the job. I'm not capable of answering that
6 question.

7 Q. Okay. And so that would be true even given the
8 information that you have today, you're not in a position
9 to know whether or not that's an accurate or an inaccurate
10 statement or assessment of Mr. Davis' job performance?

11 A. That's correct.

12 Q. Okay. And, Ms. Goodwin, at some point in time,
13 did you become aware that the firefighters employed by the
14 City of Phenix City formed a labor organization or a labor
15 association?

16 A. I am aware that there are some firefighters that
17 are members of the Firefighters Union, yes.

18 Q. Now, in terms of just a year, do you remember
19 what year you became first aware that they had a labor
20 association?

21 A. The year I became Personnel Director.

22 Q. And what year again was that?

23 A. 2002.

24 Q. Okay. Do you know who might have been the
25 president of that labor association of firefighters in the

1 year 2002?

2 A. I do not.

3 Q. Okay. Did you also, at some point in time,
4 become aware that Mr. David Davis, the plaintiff in this
5 case, became an officer or leader of the Firefighters
6 Labor Association?

7 A. Yes.

8 Q. And when you became aware of that, do you recall
9 what position or office he held in the labor association?

10 A. At some point in time, I believe Mr. Davis on an
11 occasion had mentioned that he was president of the local
12 union I believe was.

13 Q. Does the City recognize the Firefighters Labor
14 Association as a union representative of its members?

15 A. No.

16 Q. Did you ever attend or participate in any
17 meetings where the Firefighters Labor Association was
18 proposing certain proposals or raising certain concerns?

19 A. No.

20 Q. You never did that at any time?

21 A. No.

22 Q. Okay. Are you aware that the police officers
23 employed by the City of Phenix City also have an
24 association that they're members of?

25 A. I believe they have a Fraternal Order of Police.

1 I don't -- I'm not familiar with it or have no knowledge
2 of their operations.

3 Q. Have you ever had occasion to meet with the
4 leaders of the Fraternal Order of Police representing the
5 police officers here?

6 A. No.

7 Q. Okay. Let me direct your attention, if I may, to
8 Exhibit No. 12. I'm sorry, Exhibit No. 11. And this
9 appears to be a letter or memo from David Davis, then the
10 vice president of Local 3668, the Phenix City Firefighters
11 Association dated January 25, 2005 and addressed to then
12 Fire Chief Jerry Prater. Have you ever seen this memo or
13 letter before today?

14 A. (Witness peruses document.) Yes.

15 Q. Okay. Were you ever asked to do anything
16 concerning the issues that were addressed or raised by Mr.
17 Davis and the labor association?

18 A. Chief Prater and I had a meeting with David Davis
19 to talk about issues that had nothing to do with the
20 union. It would be any of these issues that were in
21 direct reference to the City and the merit system, not
22 with the union.

23 Q. Do you recall if in that meeting if Mr. Davis was
24 there in his capacity as a representative of the other
25 firefighters or any association?

1 A. Mr. Davis was on duty that day and he was there
2 as far as I knew as a City of Phenix City employee.

3 Q. And did he raise issues that might have affected
4 other firefighters in the department beyond just himself?

5 A. He -- some of the issues had to do with
6 management and merit system that would affect other
7 employees.

8 Q. And in that meeting, did Mr. Davis raise some of
9 the points or issues that are outlined in this Exhibit No.
10 11?

11 A. Mr. Davis raised issues that are addressed in
12 this letter. Some were addressed by Chief Prater, some
13 were not. The ones that had something to do with the
14 union was not addressed.

15 Q. Which issues did Mr. Davis and Chief Prater
16 address in this meeting that are outlined in this Exhibit
17 No. 11?

18 A. Safety issues were discussed to the extent that
19 they held safety meetings on a regular basis in the
20 department to deal with the safety issues. Salaries and
21 benefits were discussed as far as that being management
22 decisions. Trade time was discussed as being a management
23 decision. Communication was discussed. And I believe
24 that's as far as I can remember what was discussed in that
25 meeting.

1 Q. And those issues raised by Mr. Davis and
2 discussed at the meeting with Chief Prater and yourself,
3 is it fair and accurate to say that those were issues that
4 would have affected other firefighters and perhaps members
5 of the labor association?

6 A. They would have affected all employees of the
7 City, not just firefighters.

8 Q. Okay. But did Mr. Davis raise any points that
9 were directly related to other city employees besides the
10 fire department or was he just focused on the fire
11 department personnel?

12 A. Well, as far as him directly mentioning other
13 employees, I don't recall that. But all answers and
14 issues that were presented by Chief Prater were in
15 reference to merit system and management of the City.

16 Q. And does that meeting occur after the date of
17 this memo from Mr. Davis, Exhibit No. 11, and that date
18 again is January 25, 2005?

19 A. I don't remember the exact date, but I know that
20 we had this memo prior to that meeting.

21 Q. Okay. And after that meeting concluded, did you
22 have any other follow-up meetings that you may have
23 attended with Mr. Davis or any other members or leaders of
24 the Firefighters Labor Association?

25 A. In reference to the association?

1 Q. Well, not limited to the association. I just
2 mean meetings in which common issues like those addressed
3 in the memo were discussed --

4 A. I had no meetings -- no meeting with that, with
5 other members of the fire department in reference to these
6 issue.

7 Q. And no further meeting with Mr. Davis in
8 reference to issues affecting firefighters that you
9 attended?

10 A. Other than -- now, I did have another meeting
11 with Mr. Davis in reference to personnel issues.

12 Q. His individual personnel issues?

13 A. Correct.

14 Q. But in general, did you have any follow-up
15 meetings that you attended where Mr. Davis was there and
16 issues affecting the firefighters in general were
17 discussed?

18 A. Not that I can recall.

19 Q. Okay. Now, when this particular meeting that you
20 just testified about was concluded, did you take any
21 further action as the personnel director to follow up on
22 these questions that were discussed?

23 A. No.

24 Q. Do you know if Chief Jerry Prater took any
25 further actions to address these issues?

1 A. I do not know.

2 Q. Now, let me direct your attention, if I may, to
3 another Exhibit No. 14, which is a newspaper article that
4 appeared in the Columbus Ledger-Enquirer, and my
5 understanding is that this was printed in the newspaper in
6 the month of September 2005. And you will see the title
7 is "Three-Alarm Turmoil". And it discusses comments made
8 by Mr. Davis and other firefighters as well as Chief
9 Hunter about issues impacting the fire department. Do you
10 recall having seen this newspaper article when it came
11 out?

12 A. I do not recall. I may I have, may not have. I
13 do not recall the article.

14 Q. Have you seen it before today?

15 A. Like I said, I could have seen it in the
16 newspaper but it's -- I do not right offhand recall this
17 article.

18 Q. Okay. Have you seen this article in connection
19 with your preparation for this deposition?

20 A. No.

21 Q. Okay. Have you ever been interviewed by the
22 media concerning issues that might affect the City or city
23 employees?

24 A. No. I have been -- have been approached but I
25 don't talk to the media. I refer all comments to the City

1 Manager.

2 Q. Okay. Did you ever attend any meetings or
3 participate in any discussions in which the substance of
4 this newspaper article was addressed?

5 A. No.

6 Q. Okay. So you never talked to, for example, City
7 Manager Roberts about some of the comments made by the
8 firefighters and Mr. Davis in this newspaper article?

9 A. I do not recall that article. I do not recall
10 talking to anyone about this article.

11 Q. Okay. Do you know if the City, as its Personnel
12 Director, has any policy or rules and regulations about
13 speaking or not speaking to the media about issues
14 affecting their employment or their department?

15 A. It's the policy of the City for any
16 communications with the media to go through our City
17 Manager.

18 Q. Could you elaborate on that. I'm not sure what
19 you mean in terms of that limitation or restriction.

20 A. If anyone from the media, news media, TV media,
21 anyone came to me to ask me any questions concerning the
22 City policies or City business, I would refer all comments
23 to our City Manager.

24 Q. And does that restriction or limitation appear in
25 a written policy or regulation of the City?

1 A. There is a directive that went out from the City
2 Manager concerning speaking with the media that all
3 employees have signed and it is in -- made a part of their
4 personnel file.

5 Q. And that memo that you are referring to, is that
6 a prohibition or restriction that applies to all city
7 employees that they are not permitted to speak to the
8 media about any issues and that they are --

9 A. There's not direct verbiage of that, you know.

10 Q. Have to wait until I finish my questions and then
11 start your answers so the reporter can take the
12 information down.

13 A. I'm sorry.

14 Q. So, Ms. Goodwin, as I understand your testimony
15 just a moment ago, you recall a memorandum that was issued
16 by the City Manager, Mr. Roberts, to all city employees
17 giving them directions and instructions about not
18 communicating with the media; is that correct?

19 A. That's correct.

20 Q. Okay. And that memo is applicable and that
21 restriction is applicable to all city employees, not just
22 fire department employees but all city employees; correct?

23 A. Correct.

24 Q. Now, what would happen if a city employee
25 departed from that memorandum and that policy and spoke

1 directly to a media representative about any issues
2 affecting that individual's department for the City?
3 Would there be a possible disciplinary action or
4 investigation?

5 A. Possible.

6 Q. Okay. And what would the potentially the highest
7 form of discipline that might be visited upon at that
8 employee if he or she spoke to the media about issues
9 affecting the City or the City's department?

10 A. I would have to -- do you have a copy? I would
11 have to read that directive.

12 Q. Let's go off the record for a minute.

13 (Recess was taken.)

14 Q. All right. Mrs. Goodwin, we're back on the
15 record. And we're going to come back in a few to the
16 memorandum that you were just testifying about that was
17 apparently distributed to city employees about the
18 prohibitions concerning communications with the media by
19 city employees.

20 Let me invite your attention to Exhibit No. 15, which
21 is a memorandum from Fire Chief Wallace Hunter addressed
22 to members of Phenix City Fire Department dated September
23 20, 2005. Have you seen that document before today?

24 A. I have.

25 Q. And what's your basic understanding of the

1 purpose and intent of that memorandum?

2 A. (Witness peruses document.) The memorandum I
3 believe, in my opinion, was sent out to set some
4 guidelines and procedures as far as employees dealing or
5 having contact with the news media in regards to city
6 items and functions.

7 Q. City's what?

8 A. Items, anything dealing with the City as far as
9 communications between employees and the news media.

10 Q. Okay. Did you play any role or participate in
11 the preparation of this memorandum?

12 A. I did not.

13 Q. Did you play any role or participate in the
14 preparation of the memorandum that was distributed to all
15 other city employees by the City of Phenix City?

16 A. I did not.

17 Q. Did you participate in any meetings when this
18 subject matter of restrictions on employees talking to the
19 news media was discussed?

20 A. No.

21 Q. Now, based upon your experience here as the
22 Personnel Director for the City, if a firefighter employed
23 by the City's fire department departed from the
24 limitations in this memorandum and spoke directly to the
25 news media about an issue that impacted the fire

1 department, perhaps an issue of public concern regarding
2 the fire department, would that firefighter have violated
3 this restriction and be potentially subject to discipline?

4 A. Yes.

5 Q. And would that discipline potentially include up
6 to firing or termination?

7 A. Yes.

8 Q. Okay.

9 (Off-the-record discussion.)

10 Q. All right. Ms. Goodwin, we're back on the record
11 and the City's attorneys have been kind enough to furnish
12 me an additional copy of the memorandum that yesterday we
13 marked as Exhibit No. 34, and I want to show it to you.
14 It appears to be a memorandum issued by City Manager
15 Roberts to all city employees dated September 20, 2005.
16 And this particular one has been signed by a city employee
17 named Ruth Freidman with a date that she signed it
18 apparently on September 22, 2005. Is that the memorandum
19 that you were referring to earlier in your testimony that
20 was distributed to all city employees?

21 A. (Witness peruses document.) Yes.

22 Q. And the intent or purpose of that memorandum is
23 to prohibit, if you will, city employees from talking
24 directly to the news media about any issues affecting the
25 City or their department of employment; is that correct?

1 A. In my opinion, it is the purpose to set out and
2 give employees guidance as to the procedures of speaking
3 with the news media.

4 Q. Okay. When you say guidance, isn't it a
5 prohibition that they're not permitted to speak to the
6 media and they are expected and required to refer all City
7 contacts to the City Manager?

8 A. I believe the merit system outlines procedures as
9 far as filing grievances and there is a chain of command
10 that has to be followed.

11 Q. Okay. I'm not sure I follow your testimony right
12 now. I thought you indicated earlier, and you correct me
13 if I'm wrong, that the purpose of this memorandum issued
14 by Mr. Roberts to all city employees is to prevent them
15 from talking to the news media about issues affecting the
16 City or their department of employment and that they are
17 required to refer those inquiries from the news media to
18 the City Manager's office. Is that an accurate --

19 A. I said earlier that any -- any requests that came
20 to me through the media, I directed mine directly to the
21 City Manager. The City Manager is my immediate
22 supervisor.

23 Q. Okay. Well, with regard to other city employees,
24 all other city employees, what are they expected to do if
25 they are contacted by the news media concerning issues

1 related to their employment or related to their
2 department?

3 A. They are expected to follow the chain of command.

4 Q. Refer it up to their supervisor?

5 A. From their supervisor to their department head,
6 from their department head to the City Manager.

7 Q. Okay. Are department heads permitted to talk to
8 the news media or are they required too, as you apparently
9 are, required to refer those inquiries to the City Manager?

10 A. It's my opinion that the department head would be
11 required to speak with the City Manager before speaking
12 out on City issues.

13 Q. Before speaking out to the media?

14 A. Correct.

15 Q. What about in the area of speaking to the public
16 such as community or neighborhood meetings? Are you
17 permitted, on your own, at your own discretion, to go to a
18 community or neighborhood meeting and talk about City
19 issues or are you required to clear that first through the
20 City Manager?

21 A. Any time I would speak out on any issues
22 involving the City, I would go to mister -- to my
23 immediate supervisor, being the City Manager in my case,
24 and get approval from him before speaking on City issues.

25 Q. Okay. Is that also applicable to other city